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# Full Faith and Credit, More or Less, to Judgments: Doubts About *Thomas v. Washington Gas Light Co.*

STEWART E. STERK\*

*Workmen's compensation awards, decrees of administrative tribunals rather than courts, present the question of how far the mandate of the full faith and credit clause should reach and whether the clause should bar a claimant from pursuing supplemental compensation in a second state. Recently, in Thomas v. Washington Gas Light Co., the Supreme Court decided that full faith and credit should not prevent a claimant from obtaining supplemental compensation. Professor Sterk criticizes the Court's analysis, demonstrating the Thomas Court's neglect of the federal interests that the clause should protect. After examining the clause and its policy underpinnings, Professor Sterk concludes that decisions of administrative tribunals should be entitled to the same full faith and credit that court judgments receive.*

An injured employee seeks and recovers a workmen's compensation award for injuries suffered during the course of his employment.<sup>1</sup> Subsequently, realizing that he would be treated more generously by the compensation law of a neighboring jurisdiction in which he has also performed work for his employer, the employee seeks a supplemental award. The defendant pleads the earlier award as a bar to further relief in the second state. Since 1943 the Supreme Court has addressed three times the effect of the full faith and credit clause<sup>2</sup> on the the second state's power to award supplemental compensation.<sup>3</sup> The Court's most recent effort, *Thomas v. Washington Gas Light Co.*,<sup>4</sup> leaves the issue in a state of considerable uncertainty, largely due to the inability of more than four justices to agree on any one position.<sup>5</sup> Moreover, and perhaps more importantly, the opinions of the justices, particularly the plurality

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1. The typical workmen's compensation act includes the following features: (a) the employee automatically has a right to certain benefits when he suffers personal injury arising out of and in the course of employment; (b) negligence and fault are immaterial; (c) arbitrary maximum and minimum dollar limits; (d) the employee surrenders his common-law rights to sue his employer for the injury; (e) administration is in the hands of administrative commissions that employ relaxed rules of procedure, evidence, and conflict-of-laws; and (f) the employer is required to obtain private insurance, state-fund insurance or self-insurance. 1 A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 1.10 (1978).

2. The United States Constitution provides that: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. CONST. art. IV, § 1.

3. *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980); *Industrial Comm'n v. McCartin*, 330 U.S. 622 (1947); *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943).

4. 448 U.S. 261 (1980).

5. Justice Stevens delivered a plurality opinion that Justices Brennan, Stewart, and Blackmun joined. *Id.* at 263. Justice White, with whom Chief Justice Burger and Justice Powell joined, concurred in the judgment. *Id.* at 256. Justice Rehnquist, joined by Justice Marshall, dissented. *Id.* at 290.

opinion of Justice Stevens, raise implications for full faith and credit analysis that extend far beyond workmen's compensation cases.

*Thomas* raises two important issues. The first is whether determinations by workmen's compensation boards and other administrative tribunals should be accorded the same status as judgments of courts for purposes of the full faith and credit clause.<sup>6</sup> The second is whether and to what extent the policies or interests of individual states may control the applicability of the full faith and credit clause. The three opinions in the *Thomas* case indicate little agreement on either issue.<sup>7</sup>

This article seeks to resolve both issues. The article begins by explaining the full faith and credit decisions that set the precedential background of the *Thomas* case, as well as the *Thomas* Court's disposition of those precedents. After examining the state interests and policy foundations that underlie the full faith and credit clause, the article then discusses the applicability of those principles beyond the context of court judgments to the rulings of administrative bodies. Finally, the article reaches two conclusions with respect to the issues raised in *Thomas*. First, the article concludes that the policies embodied in the full faith and credit clause require that administrative adjudications receive the same full faith and credit as the judgments of a court. Second, the article argues that only national policies, not interests of individual states, should serve to limit the scope of the full faith and credit clause as it applies to judicial proceedings.

### I. THE *Magnolia-McCartin* DISTINCTION

When the United States Supreme Court considered *Thomas*, it did so under constraint of two major precedents: *Magnolia Petroleum Co. v. Hunt*<sup>8</sup> and

6. Full faith and credit has long required that "the judgment of a state court should have the same credit, validity and effect, in every other court in the United States, which it had in the state where it was pronounced . . ." *Hampton v. McConnell*, 16 U.S. 234, 235, 3 Wheat. 110, 111 (1818) (Marshall, C.J.), quoted in *Thomas v. Washington Gas Light Co.*, 448 U.S. at 270. This principle is codified in a federal statute which provides that "Acts, records and judicial proceedings . . . [of any state] shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738 (1976).

7. Regarding the first issue, Justice Stevens wrote that there are "critical differences" between a court judgment and a workmen's compensation award, the former tribunal having general jurisdiction and the latter having no power to consider the laws of other states. 448 U.S. at 281-82. Justice White, however, saw no "overriding differences between workmen's compensation awards and court judgments that justify different treatment for the two." *Id.* at 289 (White, J., with Burger, C.J. & Powell, J., concurring in judgment). Justice Rehnquist also "fail[ed] to see" why the first award should not be given "the same full faith and credit as would be afforded a judgment entered by a court of general jurisdiction." *Id.* at 294 (Rehnquist, J., with Marshall, J., dissenting).

Concerning the second issue, Justice Stevens identified the protection of states' interests as constituting the primary purpose of the full faith and credit clause. *Id.* at 280. Accordingly, he framed the ultimate question in *Thomas* as "whether Virginia's interest in the integrity of its tribunal's determinations forecloses a second proceeding to obtain a supplemental award in the District of Columbia." *Id.* Justice White, on the other hand, recognized two other major purposes of the full faith and credit clause: the "principle of finality" of judgments, and the provision of a "nationally unifying force." *Id.* at 288-89 (White, J., with Burger, C.J. & Powell, J., concurring in judgment). Justice Rehnquist rejected the plurality's attempt to balance state interests, reiterating the Constitution's simple mandate that public acts, records and judgments be given full faith and credit. *Id.* at 296 (Rehnquist, J., with Marshall, J., dissenting).

8. 320 U.S. 430 (1943).

*Industrial Commission v. McCartin*.<sup>9</sup> Because of an apparent inconsistency between these two cases and because of their significance to *Thomas*, an analysis of the *Thomas* issues must begin with a discussion of both *Magnolia* and *McCartin*.

A. *MAGNOLIA PETROLEUM CO. v. HUNT*

Hunt, employed in Louisiana to assist in the drilling of oil wells, traveled to Texas where he suffered an injury from a falling drill stem.<sup>10</sup> He sought and received a workmen's compensation award in Texas.<sup>11</sup> Pursuant to this Texas award, the employer's insurer made the required compensation payments.<sup>12</sup>

Upon discovering that the Louisiana workmen's compensation law<sup>13</sup> was more generous to injured workmen than the comparable Texas statute,<sup>14</sup> Hunt sought to recover compensation in Louisiana.<sup>15</sup> In response, the defendant contended that res judicata principles, given constitutional force through the full faith and credit clause, barred any award under the Louisiana statute.<sup>16</sup> Nevertheless, the Louisiana District Court granted Hunt a judgment for the compensation specified in the Louisiana workmen's compensation statute, less a setoff for the amount of the Texas payments.<sup>17</sup> The Louisiana Court of Appeals affirmed,<sup>18</sup> and the Supreme Court of Louisiana denied review.<sup>19</sup> The United States Supreme Court, in an opinion by Chief Justice Stone, reversed, holding that the Louisiana judgment had denied full faith and credit to the earlier Texas workmen's compensation award.<sup>20</sup>

Justice Stone began his analysis in *Magnolia* by noting that under Texas common law a workmen's compensation award is entitled to the same full faith and credit as a judgment of a court, and is res judicata as to all matters actually litigated or "which could have been litigated with respect to the right to compensation for the injury."<sup>21</sup> Justice Stone noted that consequently, Texas did not permit its own courts to award a second recovery for a single injury.<sup>22</sup> Louisiana law, he added, appeared to be similar in not permitting a second recovery of compensation for a single injury.<sup>23</sup> So much was not in dispute.

9. 330 U.S. 622 (1947).

10. 320 U.S. at 432.

11. *Id.*

12. *Id.* at 433.

13. At the time of the action, the applicable Louisiana law was LA. GEN. STAT. tit. 34, ch. 15, §§ 4391-4409 (current version at LA. REV. STAT. ANN. §§ 23:1021-1063 (West 1964 & Supp. 1981)).

14. TEX. REV. CIV. STAT. ANN. arts. 8306-8309 (Vernon 1967).

15. 320 U.S. at 433.

16. *Id.* at 433-34.

17. *Id.* at 434.

18. 10 So. 2d 109, 115 (La. Ct. App. 1942).

19. 320 U.S. at 434.

20. *Id.* at 446 (5-4 decision).

21. *Id.* at 435; accord, *Ocean Accident & Guar. Corp. v. Pruitt*, 58 S.W.2d 41, 44-45 (Tex. Comm. App. 1933) (final unappealed decision by Industrial Accident Board entitled to same faith and credit as judgment of court; decision res judicata as to every point parties might have brought forward).

22. Cf. 320 U.S. at 436 (not contended that Louisiana any more than Texas, permits own courts to award second recovery for second injury). Under Texas law, an employee who has received compensation in another state may not recover in Texas. *Travelers Ins. Co. v. Cason*, 132 Tex. 393, 396, 124 S.W.2d 321, 322 (1939); TEX. REV. CIV. STAT. ANN. art. 8306, § 19 (Vernon 1967 & Supp. 1980-81).

23. Cf. 320 U.S. at 436 (not contended that Louisiana, any more than Texas, permits own courts to



The Court rejected Hunt's argument that despite the full faith and credit clause, Louisiana's interest in providing a Louisiana resident with the measure of recovery allowed by its own laws permitted a supplemental award.<sup>24</sup> This contention, in the Court's view, ignored the distinction, "long recognized and applied by this Court,"<sup>25</sup> between according full faith and credit to judgments and giving the same full faith and credit to local statutory law.<sup>26</sup>

Justice Stone observed that "[t]he full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another."<sup>27</sup> He justified this difference in treatment on the ground that *res judicata* principles are not involved when the issue is full faith and credit to statutes. Each state has constitutional authority to enact its own laws,<sup>28</sup> and *res judicata* policies do not provide a basis for choosing between states' conflicting statutes.<sup>29</sup> Once a claim has been litigated in one state, the Court concluded, the full faith and credit clause carries *res judicata* across state lines and assures that "a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other state as in that where the judgment was rendered . . . ."<sup>30</sup>

Finally, Justice Stone addressed Hunt's contention that the Louisiana suit rested on a cause of action different from that pursued in Texas. Hunt asserted that a different cause of action existed because his Texas claim and remedy were predicated on the Texas statute, whereas the Louisiana claim rested on the Louisiana statute. As Justice Stone noted, however, each statute provided the same grounds for recovery.<sup>31</sup> The Court recognized that Hunt's theory would allow a plaintiff to bring as many lawsuits as there are states that would, and constitutionally could, apply their local law to the activity involved. Moreover, this result would apply whether the issue involved were workmen's compensation, or tort, or breach of contract.<sup>32</sup> Therefore, under

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award second recovery for single injury).

24. *Id.*

25. *Id.*

26. *Id.* The full faith and credit clause does not require a state to substitute another state's law for its own. See *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 500-501 (1939) (state where injury occurred may apply own compensation law rather than that of state where employer and employee contracted for employment); *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532, 540-42 (1935) (state of employer and employee may apply own compensation law rather than that of state where injury occurred).

27. 320 U.S. at 437.

28. *Id.* at 436.

29. *Id.*

30. *Id.* at 439. Nevertheless, in *Magnolia* the Court conceded the possibility of exceptional cases in which a state legitimately might ignore a sister-state's judgment and relitigate issues previously resolved. *Id.* at 438. The Court simultaneously warned, however, that any limited exceptions were not for the states to create, but were for the Supreme Court, as the ultimate interpreter of the full faith and credit clause, to fashion. *Id.* Thus, a state court may not decline, based on its own perception of a particularly strong state policy, to enforce a sister-state's judgment. In a state's desire to furnish additional compensation to an injured workman, the Court perceived no policy sufficiently important to warrant an exception to the mandate of the full faith and credit clause. *Id.*

31. *Id.* at 444.

32. *Id.* at 445. Justice Stone's opinion pointed out that "it has never been thought that an actionable personal injury gives rise to as many causes of action as there are states whose laws will permit a suit to recover for the injury . . . ." *Id.*

the *Magnolia* theory, as long as the grounds for recovery are the same, the existence of two workmen's compensation statutes that constitutionally could be applied to the injury should not permit a second recovery for a plaintiff who has already received an award in a sister state.

Four justices dissented in *Magnolia*, two of whom wrote opinions. Justice Douglas argued that the Court should accommodate the interests of Louisiana and Texas by construing the Texas award as a regulation of the relationship of the parties "only so long as they remained subject to the jurisdiction of Texas."<sup>33</sup> Under his theory, the Texas proceeding had not adjudicated Hunt's rights under his Louisiana employment contract, and should not preclude further litigation upon his return to Louisiana.<sup>34</sup> Justice Black's dissent was much broader in scope. He emphasized that more than one state may have an interest in a workmen's compensation award, and was unwilling to differentiate between the scope of the full faith and credit clause as applied to statutes and its scope as applied to judgments.<sup>35</sup>

The majority opinion in *Magnolia* expressly left open the effect of the Texas award in Louisiana if the Texas courts had held that an award of compensation in another state would not bar an award in Texas.<sup>36</sup> The Court's observation is curious, because the holding in *Magnolia* itself would require the Texas courts to bar further recovery once a sister state had rendered a compensation award. The apparent paradox, however, can be explained. The treatment in Texas of sister-state awards, in the Supreme Court's view, was relevant to the intended effect of Texas compensation awards in sister states.<sup>37</sup> Therefore, the Court must have reasoned that if Texas courts did not consider sister-state awards binding in Texas courts, then most likely Texas awards were not intended to be binding in sister-state courts. Thus deciphered, the open question was whether an award that the rendering state did not intend to bar a subsequent sister-state award must nevertheless do so under the constitutional command of full faith and credit.

#### B. INDUSTRIAL COMMISSION v. McCARTIN

Four years later, *Industrial Commission v. McCartin*<sup>38</sup> presented the question that *Magnolia* had left open. Kopp, an Illinois bricklayer, contracted in Illinois to do work in Wisconsin for McCartin, an Illinois employer.<sup>39</sup> Kopp was injured in Wisconsin and filed a claim with that state's industrial commission.<sup>40</sup> When the defendants objected to the jurisdiction of the Wisconsin Commission, Kopp filed a claim with the Industrial Commission of Illinois, seeking resolution of the jurisdictional question.<sup>41</sup> The Wisconsin

33. *Id.* at 449 (Douglas, J., with Murphy J., dissenting).

34. *Id.* at 448.

35. *Id.* at 455-56 (Black, J., with Douglas, Murphy & Rutledge, JJ., dissenting).

36. *Id.* at 430. Under Texas law an employee may not recover in Texas if he has received compensation for the injury in another state. *Travelers Ins. Co. v. Cason*, 132 Tex. 393, 396, 124 S.W.2d 321, 322 (1939); TEX. REV. CIV. STAT. ANN. art. 8306, § 19 (Vernon 1967).

37. The majority opinion in *Magnolia* relied on the finding of the Louisiana court that the Texas award had res judicata effect in Texas. *Id.* at 443. The Court acknowledged that if the original award had not been res judicata in Texas, full faith and credit would not have barred a subsequent recovery. *Id.*

38. 330 U.S. 622 (1947).

39. *Id.* at 623.

40. *Id.*

41. *Id.* at 624.

commission notified the parties that under Wisconsin law, Kopp could claim compensation under the Illinois act<sup>42</sup> and then again in Wisconsin, with a setoff in Wisconsin for amounts paid under the Illinois statute.<sup>43</sup> Kopp and McCartin agreed to a settlement of all claims arising under the Illinois act, with the express provision that "[t]his settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin."<sup>44</sup> The Illinois Commissioner approved the settlement contract, and Kopp received payment in Illinois.<sup>45</sup>

Before Kopp could pursue his second claim in Wisconsin, the United States Supreme Court issued its decision in *Magnolia*.<sup>46</sup> In response to *Magnolia*, McCartin filed an amended answer in which he contended that the full faith and credit clause barred the Wisconsin proceedings.<sup>47</sup> The commission nevertheless granted Kopp a supplemental award. After the Wisconsin courts set aside the award on authority of *Magnolia*,<sup>48</sup> the United States Supreme Court granted certiorari<sup>49</sup> and reversed unanimously.<sup>50</sup>

The Court distinguished *Magnolia* on the ground that the Illinois award, unlike the Texas award in *Magnolia*, was not intended to foreclose Kopp's rights to recover under other states' workmen's compensation legislation.<sup>51</sup> Unlike Texas law, Illinois law gave no indication that an award by that state was "made explicitly in lieu of any other recovery for injury."<sup>52</sup> The Court concluded that only "unmistakable language" in a state's statute or judgment would justify a finding that one compensation award was intended to preclude additional recoveries in other states.<sup>53</sup> In addition, the Court based its conclusion on the language of the Illinois award, which explicitly reserved Kopp's rights in Wisconsin.<sup>54</sup> This reservation established that the Illinois award, consistent with the Court's reading of the Illinois statute,<sup>55</sup> was

42. ILL. ANN. STAT. ch. 48, §§ 138.1-138.27 (Smith-Hurd 1969).

43. 330 U.S. at 624.

44. *Id.*

45. *Id.* at 625. The Illinois Commissioner informed Kopp that he did not know what effect the reservation of rights in Wisconsin would have, but Kopp agreed to "take chances on Wisconsin," *id.*, in order to benefit from the lump-sum settlement. *Id.*

46. *Id.*

47. *Id.*

48. McCartin v. Industrial Comm'n, 248 Wis. 570, 22 N.W.2d 522 (1946), *rev'd*, 330 U.S. 62 (1947).

49. 329 U.S. 696 (1946).

50. 330 U.S. at 630. Justice Rutledge concurred in the result. *Id.*

51. *Id.* at 626-27. The McCartin Court noted the express finding in *Magnolia* that the Texas workmen's compensation law precluded a second recovery in any other state. *Id.* at 626. In fact, however, what the *Magnolia* Court actually found was that the Texas law would not allow a recovery in Texas if the employee had received compensation elsewhere. See note 36 *supra* and accompanying text (discussing Court's construction of Texas workmen's compensation law). Nevertheless, by implication the converse also may be true.

52. 330 U.S. at 626. Illinois law provides that "[n]o common law or statutory right to recover damages . . . for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act . . ." ILL. ANN. STAT. ch. 48, § 138.5(a) (Smith Hurd 1969 & Supp. 1980-81). The Court found "nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive . . ." 330 U.S. at 627.

53. *Id.* at 628. The Court noted that workmen's compensation laws are liberally construed in furtherance of the purpose for which they were enacted—the benefit of the employee. *Id.*

54. 330 U.S. at 628-29.

55. See note 52 *supra* (discussing Court's interpretation of Illinois law).

intended only to bar further claims in Illinois, not a supplemental workmen's compensation award in Wisconsin.<sup>56</sup> Thus, in the Court's judgment, *Magnolia* did not constitute controlling precedent for *McCartin*.

Thus, until *Thomas v. Washington Gas Light Co.*,<sup>57</sup> there was a tension between the Supreme Court's precedents on the applicability of full faith and credit to workmen's compensation awards. Under *Magnolia*, the second state must give full faith and credit to a workmen's compensation award of the rendering state.<sup>58</sup> *McCartin* qualified that rule severely by holding that full faith and credit principles apply only if the law of the rendering state contains "unmistakable language" indicating the state's intention to bar subsequent awards.<sup>59</sup> Because few workmen's compensation statutes contained the "unmistakable language" required in *McCartin*, the *Magnolia* rule was of little effect.<sup>60</sup> Yet *Magnolia* and *McCartin* continued to coexist.

### C. THE DISTINCTION AND ITS DEMISE

The distinction between the two cases rests on the intended extraterritorial effect of the workmen's compensation award. Because under Texas law the award in *Magnolia* was intended to bar an additional remedy elsewhere, a second award in Louisiana was impermissible; because under Illinois law the Illinois award in *McCartin* was not so intended, the subsequent Wisconsin award did not violate the full faith and credit clause.

Implicitly, the *McCartin* distinction rests on the premise that only one purpose underlies the full faith and credit clause: the promotion of respect for sister-state judgments. If this were the sole purpose of the clause, the distinction would be unassailable, because it gives each state judgment the effect that the state has intended. The *McCartin* premise, however, is incorrect.

As courts have long recognized, respect for sister-state judgments is not the only policy that the full faith and credit clause advances, nor is it even the primary one. Justice Stone emphasized as early as 1943 that the full faith and credit clause is a "nationally unifying force"<sup>61</sup> that restricts the rights of otherwise independent sovereignties "by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application."<sup>62</sup>

56. 330 U.S. at 630.

57. 448 U.S. 261 (1980).

58. See notes 20-30 *supra* and accompanying text (discussing *Magnolia* holding).

59. See notes 50-56 *supra* and accompanying text (discussing *McCartin* holding).

60. See *Thomas v. Washington Gas Light Co.*, 448 U.S. at 274 & n.21 (because Illinois statute construed in *McCartin* typical of most states' laws, *Magnolia* had little practical effect after *McCartin*). The *Thomas* Court observed that only Nevada's statute appears to contain the unmistakable language required under *McCartin*. *Id.*

61. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. at 439; see *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948) (purpose of clause to transform aggregation of independent states into nation); *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935) (purpose of clause to make several states integral parts of single nation); Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153, 161 (1949) (purpose of clause to create unified nation by altering status of otherwise independent states).

62. 320 U.S. at 439. Dissenting in *Magnolia*, Justice Douglas agreed that "[t]he command of the full faith and credit clause frequently makes a reconciliation of the two [states'] interests impossible. One must give way in the larger interest of the federal union." *Id.* at 447 (Douglas, J., with Murphy, J., dissenting).



Permitting individual states to determine the extraterritorial effect of their own judgments is inconsistent with this policy of national unification. If, for example, a state were to enact a statute providing that all the state courts' judgments in tort actions would have no extraterritorial effect, a plaintiff could relitigate his tort claim in any sister state that could exercise jurisdiction over the defendant, thereby thwarting the policy of national unification.<sup>63</sup> Two contrary judgments arising out of the same set of facts could stand within the same nation. The possibility of conflicts would be great, especially if some states intended their judgments to have extraterritorial effect and others did not.<sup>64</sup> Such conflicts might be tolerable, for lack of an alternative, in an association of independent sovereignties. Within our federal system, however, it was just such difficulties that the full faith and credit clause was designed to eliminate.

The alternative to permitting states to determine the extraterritorial effect of their judgments is, of course, a resort to the basic federal policy underlying the full faith and credit clause: the need to join many individual sovereignties into a national union. Recognizing that the basic question is a federal one does not mean, however, that the states have no role in determining the extraterritorial effect of their own judgments. By determining the effect of a judgment within the state, a state may determine indirectly the extraterritorial effect of its judgment.<sup>65</sup> This is true because the federal mandate, as expressed in the statute implementing the full faith and credit clause,<sup>66</sup> requires sister states to give judgments the same effect that they would have within the rendering state.<sup>67</sup> Nevertheless, the rendering state should not be permitted to differentiate between the effect its judgments have abroad and their effect at home, because such differentiation runs counter to the need for unification embodied in the full faith and credit clause. Consequently, no state should be permitted to prescribe directly, as a matter of state law, the extraterritorial effects of its judgments.

It is this criticism of the *Magnolia-McCartin* distinction that underlies the plurality opinion in *Thomas v. Washington Gas Light Co.* In *Thomas*, a District of Columbia employee suffered a back injury while working in

63. Assume, for example, that state *X* rendered a judgment for the plaintiff in a tort action. Unless the defendant had assets within that state, the plaintiff's judgment, under the terms of the statute, would be of no use to him because sister states would give no effect to the judgment. In order to secure redress, the plaintiff would be required to relitigate the dispute in another state. Conversely, if the defendant prevailed in state *X*, that judgment would not protect him from subsequent actions in other states. Clearly, neither result would be consistent with the needs of the nation as a whole.

64. Suppose, for instance, state *X*, having declared that its judgments are entitled to no extraterritorial effect, were to award a judgment to the defendant in a civil action. Subsequently, the plaintiff, after relitigating the same cause of action in state *Y*, receives a judgment. If the plaintiff seeks to enforce state *Y*'s judgment in state *X*, should he prevail? Full faith and credit would require state *X* to enforce the *Y* judgment, because *Y*'s judgment was not limited in territorial scope. Yet the courts of state *X* would be unlikely to ignore the existing *X* judgment. Moreover, the last-in-time rule of *Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939) would not resolve the issue because the basis for the *Treinies* holding, the opportunity to litigate the validity of the first judgment in the second state, would not exist if all the parties conceded in the state *Y* proceeding that the judgment of state *X* was valid, but irrelevant to the *Y* proceedings because of the *X* statute.

65. The statute implementing the full faith and credit clause requires only that a judgment receive the same effect outside the state as it would receive within the rendering state. See note 6 *supra* (quoting pertinent parts of federal statute).

66. 28 U.S.C. § 1738 (1976).

67. *Id.*



Virginia.<sup>68</sup> After receiving a compensation award in Virginia he sought supplementary compensation in the District of Columbia.<sup>69</sup> The administrative law judge in the District of Columbia granted the supplementary award despite the defendant's contention that the Virginia award excluded any other recovery.<sup>70</sup> Relying upon the full faith and credit clause, however, the United States Court of Appeals for the Fourth Circuit reversed a Benefits Review Board order upholding the supplemental award.<sup>71</sup>

Although Justice Stevens' opinion for the plurality in *Thomas* conceded that "*McCartin* by its terms rather than the earlier *Magnolia* decision, is controlling as between the two precedents,"<sup>72</sup> the plurality declined to rest its decision on that ground. Instead, the plurality acknowledged that the *McCartin* rule "represents an unwarranted delegation to the States of this Court's responsibility for the final arbitration of full faith and credit questions,"<sup>73</sup> and embarked on a reconsideration of *Magnolia* and *McCartin*.

Faced with conflicting precedents, the Court first examined the constraints that the doctrine of stare decisis imposed upon the Court's disposition of *Thomas*.<sup>74</sup> Recognizing that *McCartin* "all but overruled *Magnolia*,"<sup>75</sup> the Court concluded that the doctrine of stare decisis would not be served either by attempting to revive *Magnolia* or by attempting to preserve the uneasy coexistence of the two cases.<sup>76</sup> Freed from the fetters of stare decisis, the plurality chose to analyze the case by considering the state interests involved. In the plurality's view, three specific interests were at stake: the interest of Virginia in limiting the potential liability of employers doing business within the state's borders, the interest of both Virginia and the District of Columbia in the welfare of the injured employee, and the interest of Virginia in the respect accorded its determinations by other sovereigns.<sup>77</sup> The Court evaluated these three interests and concluded that none should preclude a supplemental award in the District of Columbia.<sup>78</sup> Because this conclusion was

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68. 448 U.S. at 264.

69. *Id.* at 265.

70. *Id.*

71. *Washington Gas Light Co. v. Thomas*, 598 F.2d 617 (4th Cir. 1979), *rev'd*, 448 U.S. 261 (1980).

72. 448 U.S. at 269. The applicable Virginia statute provides that "[t]he rights and remedies herein granted . . . shall exclude all other rights and remedies . . . at common law or otherwise . . ." VA. CODE § 65.1-40 (1980). Justice Stevens noted that although this provision is not identical to the Illinois statute in *McCartin*, it contains no "unmistakable language" that precluded supplementary compensation. 448 U.S. at 269. The absence of such language led him to believe that *McCartin* was the controlling precedent. *Id.*

73. *Id.* at 271. Before *McCartin*, the Supreme Court had established the principle that "[t]his Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state." *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 502 (1939). Inevitably, the *McCartin* rule conflicted with this principle. 448 U.S. at 271.

74. *Id.* at 272.

75. *Id.* at 271 n.70.

76. *Id.* at 277. In addition, the *Thomas* Court recognized that the *Magnolia* holding was in direct conflict with the *Restatement of Conflict of Laws*. See *id.* (under *Restatement*, prior workmen's compensation award no bar to proceeding in another state; amount of first award credited on second) (citing *RESTATEMENT OF CONFLICT OF LAWS* § 403 (1934)).

77. 448 U.S. 277.

78. *Id.* at 286. The first interest was not controlling because the employee initially could have sought compensation in either jurisdiction against the same employer. *Id.* at 280. The employer and the insurer "would have had to measure their potential liability exposure by the more generous of the two workmen's

incompatible with *Magnolia* but could coexist with *McCartin*, the plurality concluded that *Magnolia* should be overruled.<sup>79</sup>

Concurring in the judgment, three members of the Court advocated retaining the *Magnolia-McCartin* distinction, in deference to principles of stare decisis.<sup>80</sup> Nevertheless, the concurring opinion of Justice White found *Magnolia* to be the "sunder doctrine" and suggested that *McCartin* rested "on questionable foundations."<sup>81</sup> Justice Rehnquist, in dissent, characterized the *McCartin* case as "analytically indefensible" and advocated a return to the *Magnolia* rule.<sup>82</sup> In light of this split in the Court, the current status of the *Magnolia-McCartin* distinction is somewhat uncertain, although it undoubtedly has been discredited analytically.

Despite the range of views expressed in the various *Thomas* opinions, what is more important for present purposes is the analysis in the plurality opinion. In deciding that the Virginia workmen's compensation award did not bar a subsequent District of Columbia award, the plurality evaluated the state interests "affected by the potential conflict between Virginia and the District of Columbia."<sup>83</sup> Because a supplementary award in the District of Columbia would not adversely affect Virginia's interests, the plurality held that full faith and credit did not bar the second award.<sup>84</sup> In addition, the plurality questioned the *Magnolia* Court's conclusion that full faith and credit rules applicable to judgments generally are equally applicable to workmen's compensation awards.<sup>85</sup> It is these two features of the plurality opinion—the emphasis on state interests in determining the application of the full faith and credit clause and the questioned applicability of full faith and credit principles to workmen's compensation awards—that provide the focus of the remainder of this article.

## II. THE FULL FAITH AND CREDIT CLAUSE: THE ROLE OF STATE INTERESTS

The Supreme Court has said repeatedly that the full faith and credit clause is an instrument of national unification, designed to help create a nation out of what were once independent sovereign states.<sup>86</sup> Any unification process

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compensation scheme in any event." *Id.* The second interest, that of the injured workman, clearly did not foreclose successive awards and constituted an interest common to both jurisdictions. *Id.* Virginia's interest in the integrity of its decisions did not require the denial of a second award for two reasons. First, the District of Columbia proceeding did not involve the relitigation of Virginia's factual determinations. *Id.* at 281; see note 158 *infra* and accompanying text (discussing *Thomas* Court's conclusion that only factual findings entitled to res judicata effect). Second, the jurisdictional limitations on an administrative tribunal empower it to establish rights only under the laws of its own state. 448 U.S. at 282.

79. *Id.* at 286. A total of five other justices concluded that *Magnolia* should not be overruled. See *id.* at 289 (White, J., with Burger, C.J. & Powell, J., concurring); *id.* at 290 (Rehnquist, J., with Marshall, J., dissenting).

80. 448 U.S. at 289 (White, J., with Burger, C.J. & Powell, J., concurring in judgment).

81. *Id.*

82. *Id.* at 290 (Rehnquist, J., with Marshall, J., dissenting).

83. *Id.* at 277.

84. *Id.* at 286.

85. *Id.*

86. E.g., *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439 (1943); *Williams v. North Carolina*, 317 U.S. 287, 294 (1942); *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935).

requires some sacrifice by the individual components to satisfy the requirements of the union; so it is with the full faith and credit clause. The command of the clause necessitates the occasional subordination of one state's interests to those of the union. The difficulty lies in determining when the circumstances require sacrifice by the individual states in favor of the common goal, and when they do not.

#### A. FULL FAITH AND CREDIT TO STATUTES

Until *Thomas*, the Supreme Court had embarked on a line of full faith and credit analysis that drew a sharp distinction between the role of state interests depending on whether judgments or statutes were involved.<sup>87</sup> A broad reading of the *Thomas* case, however, suggests a blurring of that distinction, a blurring that is unwarranted in light of the policies that underlie full faith and credit.

The Constitution itself makes no distinction between the full faith and credit to be given to "public Acts" and that to be accorded "judicial Proceedings."<sup>88</sup> The statute implementing the constitutional provision,<sup>89</sup> however, did draw a distinction.<sup>90</sup> Judicial proceedings, according to the statute, were entitled to "such faith and credit given them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken."<sup>91</sup> No parallel provision defined the scope of full faith and credit to statutes. During the 1948 recodification Congress, apparently without any intention to work a change in the law, amended the statute to place judicial proceedings and public acts on the same footing.<sup>92</sup> Whatever the literal language of the Constitution and the statute, the question remains whether any interests of the forum state may be sufficiently strong to justify that state's refusal to give effect to a sister state's statutes that would be, and constitutionally could be, given effect in the sister state.

87. See, e.g., *Williams v. North Carolina*, 317 U.S. 287, 296 (1942) (full faith and credit clause does not compel courts of one state to subordinate local interests to statutes of other states); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 500 (1939) (full faith and credit clause does not compel one state to enforce statutes of another); *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532, 550 (1935) (same).

88. For text of the full faith and credit clause, see note 2 *supra*.

89. Act of May 26, 1790, 1 Stat. 122, ch. 11, § 1.

90. The wording of the statute is ambiguous:

§ 1. *Be it enacted, &c.* That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: That the records and judicial proceedings of the Courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the Clerk . . . And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the states from whence the said records are, or shall be, taken.

*Id.*

91. *Id.*

92. A provision of the amendment incorporated, in passing, public acts as well as judicial proceedings: "[t]hat all provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, . . . [and] judicial proceedings . . . of the respective territories . . . as to [those] . . . of the several states." Act of March 27, 1804, 1 Stat. 298, ch. 61, § 2.

The language of the full faith and credit clause leaves unclear precisely what it means to give a sister state's statutes the same full faith and credit they receive in the sister state. The most literal analysis would require that the forum apply the sister state's statute in any case where, on the same facts, the sister state would deem the statute applicable. Whatever the theoretical plausibility of such a rule, however, its practical result would be nonsensical. Whenever two states had enacted rules by their terms applicable to the same controversy, each state's courts, by the mandate of full faith and credit, would be forced to ignore the local law in favor of the contrary law of the sister state.<sup>93</sup> Not only would such a rule frustrate the interests of each state, but perhaps more importantly, the rule would do nothing to advance the policy of national unification that underlies the full faith and credit clause. Such a rule, of course, has never warranted serious consideration.

Another possible reading of the full faith and credit clause, and one that would make the clause an instrument of national unification, would construe the clause to mean that constitutionally only one state's law may govern any single transaction and that one law must receive full faith and credit in all other states. In effect, this interpretation would make choice of law a constitutional discipline governed entirely by the full faith and credit clause. One set of choice-of-law rules would apply to any controversy arising anywhere in the United States, no matter where in the United States the action might be brought. Although the Supreme Court generally has not adopted this approach, the Court has adopted it in at least one area.<sup>94</sup>

Although constitutionalizing choice-of-law would promote national unification, the Supreme Court appears to have retreated from its earlier inclination to adopt that approach.<sup>95</sup> At least two reasons support the Court's retreat from using the full faith and credit clause as an instrument for nationalizing choice of law. The first is the enormous burden that the Court would bear in hearing and deciding choice-of-law cases from every jurisdiction, especially in an era of competing choice-of-law theories and disagreement over the judicial function in resolving choice-of-law controversies.<sup>96</sup>

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93. As the Court has explained:

A rigid and ritual enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.

*Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532, 547 (1935).

94. *Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586 (1947), for example, may indicate that under full faith and credit principles membership rights in fraternal benefit corporations are governed only by the law of the state of incorporation. *See id.* at 589 (six-month limitation barring death benefits claim valid in state of incorporation although such limitation void under law of forum state). Yet the recent case of *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981) leaves the authority of *Wolfe* in a dubious state. *See id.* at 319-20 (when decedent and insurer had substantial contacts with Minnesota no full faith and credit clause violation in Minnesota court's applying Minnesota law to claim on Wisconsin insurance policy for death in Wisconsin of Wisconsin resident).

95. Compare *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 319-20 (1981) (choice-of-law question resolved by examining interests of forum state and fairness) with *New York Life Ins. Co. v. Dodge*, 246 U.S. 357, 376-377 (1918) (under fourteenth amendment valid contract executed in New York concerning insurance policy executed in Missouri could not be rendered ineffective by Missouri).

96. In *Allstate Ins. Co. v. Hague*, 449 U.S. at 306-07, for example, the Court noted that the forum state had adopted the analytical framework for resolving choice-of-law questions proposed by Professor Leflar.



Considerations of federalism suggest the second reason. As the Court has remarked:

[T]he very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.<sup>97</sup>

Thus, the Court has recognized that requiring complete uniformity is neither desirable nor permissible under the concept of federalism.

Although the Supreme Court has not made choice-of-law a constitutional discipline, the Court has never suggested that the states are free to fashion choice-of-law doctrine without reference to constitutional limitations. Recent cases in which the Court upheld state choice-of-law decisions indicate unmistakably that some constitutional restrictions on choice of law remain.<sup>98</sup>

In this regard, the interests or policies of the several states have assumed considerable importance. In many cases more than one state has an interest or policy that would be frustrated by an inability to apply its own rule. Apparently recognizing that in such cases there is no single "correct" method for resolving the dispute, the Court has permitted any state with sufficient interest in or connection with a dispute to apply its own rule.<sup>99</sup> The focus, then, has been on whether an individual state has an interest that justifies application of its own rule despite the existence of a contrary rule applied in another jurisdiction.

This focus on states' interests, broadly defined, is unavoidable when considering the application of full faith and credit to public acts. When one

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See Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U. L. REV. 267, 282 (1966) (factors include predictability, interstate order, simplification of judicial task, advancement of forum's interests, and applying better rule of law). The Court declined to evaluate this theory and restricted its role to determining whether the state had acted within its constitutional authority. 449 U.S. at 307. Even if the Court were to adopt a set of apparently rigid choice-of-law rules, the opportunity for state and lower federal courts to manipulate individual cases to fit one or another of those rules would likely be great enough to keep the Court well-stocked with choice-of-law cases.

97. *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939).

98. See, e.g., *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 307 (1981) (Court's sole function to determine whether state court's choice of its own law exceeded federal constitutional limitations); *Nevada v. Hall*, 440 U.S. 410, 421 (1979) (full faith and credit clause requires each state to give effect to official acts of other states unless in violation of own public policy); *Clay v. Sun Ins. Office*, 377 U.S. 179, 181-82 (1964) (State's ample contacts with transaction sufficient to justify application of its law without violation of full faith and credit or due process).

99. The Supreme Court has most recently articulated its standard as whether the forum state has "a significant aggregation of contacts with the parties and the occurrence, creating state interests, such that application of its law [is] neither arbitrary nor fundamentally unfair." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 320 (1981). Dissenting in *Hague*, Justice Powell nevertheless articulated a similar approach: "In short, examination of contacts addresses whether the state has an interest in the application of its policy in this instance. . . . If it does, the Constitution is satisfied." *Id.* at 334-35 (Powell, J., with Burger, C.J. & Rehnquist, J., dissenting) (quoting B. Currie, *The Constitution and Choice of Law: Governmental Interest and Function*, in *SELECTED ESSAYS ON THE CONFLICT OF LAWS* 189 (1963)).

In his concurring opinion in *Hague* Justice Stevens suggested a somewhat different formulation: "the [full faith and credit] Clause should not invalidate a state court's choice of forum law unless that choice threatens the federal interest in national unity by unjustifiably infringing upon the legitimate interests of another State." *Id.* at 323 (Stevens, J., concurring).



state as sovereign asserts an interest in applying its legal rule to a particular dispute, the full faith and credit clause cannot justify forbidding that state to do so unless the sovereignty of a sister state is thereby affected.<sup>100</sup> Even if a sister state has a sovereign interest in a controversy, the only way to resolve that conflict is to weigh the respective interests of the two states or to leave each state free to pursue its own policies.<sup>101</sup> No federal policies can provide a basis for frustrating the sovereign interests of one state rather than those of another.

Without first declaring choice of law to be a strictly constitutional discipline, the Court cannot decide questions of full faith and credit to public acts unless it evaluates the interests, broadly defined, of the states involved.<sup>102</sup>

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100. Professor Martin has emphasized that the full faith and credit clause requires respect and deference to the sovereign interests of other jurisdictions, not to the personal rights of parties. See Martin, *A Reply to Professor Kirgis*, 62 CORNELL L. REV. 151, 153 (1976) (advocating full faith and credit approach rather than fairness approach to conflicts cases because former focuses on interest of states other than forum); Martin, *Constitutional Limitations on Choice of Law*, 61 CORNELL L. REV. 185, 192, 196 (1976) (same) [hereinafter Martin, *Constitutional Limitations*]. See also Kirgis, *The Roles of Due Process and Full Faith in Choice of Law*, 62 CORNELL L. REV. 94, 119-120 (1976) (explaining full faith and credit limitations on choice-of-law determinations). Professor Martin's analysis suggests, of course, that if no other jurisdiction has a sovereign interest in a particular resolution of a dispute, the forum should be free from full faith and credit constraints in deciding what rule of law to apply.

In his concurring opinion in *Hague*, Justice Stevens set out the following formulation of full faith and credit limitations:

The Full Faith and Credit Clause . . . [directs] that a State, when acting as the forum for litigation having multistate aspects or implications, respect the legitimate interests of other States and avoid infringement upon their sovereignty. The Clause does not, however, rigidly require the forum state to apply foreign law whenever another State has a valid interest in the litigation. On the contrary, in view of the fact that the forum State is also a sovereign in its own right, in appropriate cases it may attach paramount importance to its own legitimate interests.

Allstate Ins. Co. v. Hague, 449 U.S. at 322-23 (Stevens, J., concurring) (citations omitted). Justice Stevens suggested an additional basis for upsetting a choice-of-law decision: arbitrariness or fundamental unfairness to a litigant in violation of the due process clause. *Id.* at 326-31.

101. This article makes no attempt to enumerate what connections with a state would suffice to give the state a sovereign interest in a dispute. The analysis pursued in this article does not depend on any particular parochial conception of a state interest, such as the one espoused by proponents of the governmental interest analysis. The Supreme Court might employ various criteria to determine whether a state has an interest in a particular dispute that is sufficient to justify the application its own law. Once the Court decides that a state has such an interest it cannot forbid the state to apply its own law unless the Court chooses to balance the various states' interests, and concludes that application of that state's law would cause more significant frustration of the interests of other states.

102. If all choice-of-law decisions were a question of constitutional mandate, the Supreme Court could decide them without reference to state interests. Federal principles, as yet undeveloped, could guide choice-of-law decisions that were independent of any state interests. Under this approach, a state's rule could govern even if the state were to disclaim any sovereign interest in the controversy. Such a constitutional choice-of-law system, however, is inconsistent with the prevalent notion that the full faith and credit clause, as applied to public acts, stands as a protection of state sovereignty. See note 100 *supra* (discussing importance of interests of non-forum states).

Even if one views the full faith and credit clause as a protection against arbitrariness and fundamental unfairness, as the plurality opinion in *Allstate Ins. Co. v. Hague*, 449 U.S. at 320, suggests, an evaluation of state interests is still necessary. The plurality opinion in *Hague* implies that if a state has a sovereign interest in a dispute, application of its own law will not be arbitrary or fundamentally unfair. See *id.* (because Minnesota had significant aggregation of contacts with parties and occurrence that created state interests, applying Minnesota law neither arbitrary nor unfair).

Suppose, for example, the Court were to rule that full faith and credit to public acts required simply that each state enforce rights recognized in the state where the last act necessary to create liability arose.<sup>103</sup> A ruling of this kind would place considerable reliance on notions of territorial sovereignty, and would be the very antithesis of the governmental interest analysis favored by many modern scholars.<sup>104</sup> Yet a ruling of this type would be, in effect, a decision that the occurrence of the last act within a state gives that state alone a sovereign interest in having its law applied.<sup>105</sup> No other sovereign would have the territorially-based interest necessary to claim that a decision against applying its own rules undermined the state's sovereignty. The sovereign "interests" involved are not those Professor Currie had in mind, but it is these interests on which territorialist conflicts doctrine is based.<sup>106</sup>

Similarly, if the Supreme Court were to concede that more than one state might have a sovereign interest in applying its law to a particular dispute, the

103. See *Hartford Accident and Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143, 145 (1934) (choice-of-law analysis in fidelity bond case gave place where bond written controlling interest despite possibly greater contacts with other state).

104. Professor Brainerd Currie developed a method for resolving choice-of-law cases, a method widely known as "governmental interest analysis." See generally Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9 (1958). Currie's approach requires courts to identify the state policies that underlie the competing legal rules before resolving a choice-of-law dispute. *Id.* at 9-10. Currie termed these state policies "governmental interests." *Id.* at 10. For a brief general description of Currie's method of resolving choice-of-law disputes, see W. REESE & M. ROSENBERG, *CASES ON CONFLICT OF LAW* 469-72 (7th ed. 1978).

Currie refined his approach through a series of articles. See generally B. CURRIE, *SELECTED ESSAYS ON THE CONFLICT OF LAWS* (1963) (reprinting most of Professor Currie's articles on governmental interest methodology). With various modifications, his theory has gained many academic adherents. See generally Horowitz, *The Law of Choice of Law in California: A Restatement*, 21 U.C.L.A. L. REV. 719 (1974); Sedler, *Weintraub's Commentary on the Conflict of Laws: The Chapter on Torts*, 57 IOWA L. REV. 1229 (1972); Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1 (1963). In addition, the California Supreme Court has adopted Currie's approach as the predominant method of resolving choice-of-law questions in California. See *Bernhard v. Harrah's Club*, 16 Cal. 3d 313, 319-21 & n.2, 546 P.2d 719, 722-23 & n.2, 128 Cal. Rptr. 215, 218-19 & n.2 (1976) (applying Currie's methodology to determine whether California or Nevada law should govern personal injury action).

105. If that state concluded, however, that it had no sovereign interest in the dispute, the full faith and credit clause provides no warrant for undermining that conclusion. Experience demonstrates, however, that this situation is unlikely to arise. The Supreme Court has never been asked, under the guise of full faith and credit, to require an unwilling state to apply its own law.

106. The territorialist theory, which is based on vested rights that accrue upon the occurrence in a jurisdiction of the last act necessary to create a cause of action, dominated conflicts theory of the first half of the twentieth century. Its principal champion was Professor Joseph Beale, who served as the Reporter for the first *Restatement*. See generally J. BEALE, *CONFLICT OF LAWS* (1935); *RESTATEMENT OF CONFLICT OF LAWS* Ch. 8 & 9 (1934).

By contrast, Professor Currie's method minimizes the importance of territorial connections in favor of a policy-oriented approach, with particular significance attached to forum policies. Currie's governmental interests are those that a "selfish state, concerned only with promoting its own interests" would pursue. B. CURRIE, *SELECTED ESSAYS ON THE CONFLICT OF LAWS* 89 (1963). According to Currie, when a litigant invokes a foreign state's law:

the court should, first of all, determine the governmental policy expressed in the law of the forum. It should then inquire whether the relation of the forum to the case is such as to provide a legitimate basis for the assertion of an interest in the application of that policy. This process is essentially the familiar one of construction or interpretation.

Court could not resolve the dispute without considering the asserted interest of the states involved. In such a situation, the Court could, on one hand, conclude that the dispute must be resolved by weighing those interests.<sup>107</sup> Conversely, the Court could hold that any state with an interest in the controversy may apply its own rule of decision.<sup>108</sup> In either event, the Court could proceed only after first deciding whether the choice-of-law question presented an affront to sovereign interests, however defined, and then deciding whether despite the full faith and credit clause, the forum state's interest permitted overriding the sovereign interests of the other states.

Whether the application of a sister state's law would unconstitutionally frustrate the sovereign interests of a state is a question of federal law.<sup>109</sup> Thus, the interests of a sovereign state that the full faith and credit clause protects must be *federally defined* interests. The role of federal policies or interests in determining the scope of full faith and credit to public acts is otherwise quite limited. There are only two issues that are federal in nature. The first is whether an asserted state interest is a cognizable interest for full faith and credit purposes. The second is whether the competing state interests should be weighed or whether the law of any state may be applied without additional constitutional restriction so long as that state does have an interest. There are no overriding federal policies that can resolve issues of full faith and credit to statutes without evaluating state interests. The Supreme Court cannot resolve questions of full faith and credit to public acts by allowing federal policies to prevail over the interests of either state, or of both.

#### B. FULL FAITH AND CREDIT TO JUDGMENTS

The role of state interests in determinations of full faith and credit to statutes has been the focus of much judicial consideration. Until the *Thomas* case, the Supreme Court had not accorded comparable attention to state interests in cases involving full faith and credit to judgments. Some notable dissents have argued that, in certain circumstances, sister-state judgments that frustrate the interests of the forum state need not receive full faith and credit.<sup>110</sup> No Court majority, however, has so held.

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107. In *Alaska Packers Ass'n v. Industrial Accident Comm'n*, the Court explained that:

[T]he conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.

294 U.S. 532, 547 (1935).

108. See *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 313 (1981) (state must have significant contact creating state interests); *Nevada v. Hall*, 440 U.S. 410, 424 (1979) (forum state had closely related and substantial interest).

109. A caveat is necessary. If a state disclaims any sovereign interest in having its law applied to a particular dispute, there is no constitutional reason to override that disclaimer. Only when more than one jurisdiction asserts a sovereign interest should the resulting conflict implicate federal law.

110. See *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 459 (1943) (Black, J., with Douglas, Murphy & Rutledge, JJ., dissenting) (when two states have interest in workmen's compensation litigation, effect of decision should be for states to determine); *Yarborough v. Yarborough*, 290 U.S. 202, 219 (1933) (Stone, J., with Cardozo, J., dissenting) (full faith and credit does not require obligations of one state to be placed beyond control of others, without regard to their interests).



There are two reasons for according full faith and credit to sister-state judgments even if the interests of the forum state are thereby frustrated. First, unlike the situation with full faith and credit to public acts, a court can decide issues of full faith and credit to judgments without weighing state interests. A blanket rule that the prior judgment binds the parties throughout the United States resolves disputes without any consideration of state interests. Second, and more important, a rule permitting a state, on the basis of its own important interests, to readjudicate matters resolved by a sister-state's judgments would undermine the federal policies that underlie the full faith and credit clause. The full faith and credit clause is designed to avoid multiple and contradictory judgments in the several states.<sup>111</sup> The uncertainty inherent in a system that allows different courts within one nation to apply different rules of law to the same dispute is unfortunate. That uncertainty is trivial, however, when compared to the chaos that would result if different and contradictory judgments could co-exist in different states within the same nation. Enforcement problems would abound if the states were free to ignore judgments of sister states. Parties could not obtain a final determination of their rights without bringing actions in every state that had the jurisdiction to entertain them. In short, without some method of eliminating the possibility of conflicting judgments, the situation would be intolerable.

Nevertheless, the solution to the problem need not require according full faith and credit to the first valid judgment rendered. Another approach would be to grant judicial jurisdiction only to the state with the greatest interest in a particular controversy, or to accord full faith and credit only to judgments rendered by the state with the greatest interest, however defined. Alternatively, courts could give full faith and credit to determinations of any state with an interest, whether or not it is the greatest interest. These solutions, however, would create different problems of significant dimension.

The alternative of permitting only the state with the greatest interest to make final judicial resolution of a controversy, for example, has several drawbacks. First, that state's courts may not have jurisdiction over the case.<sup>112</sup> Second, even if those courts could properly exercise jurisdiction, the forum might be seriously inconvenient for one or more parties, particularly for a party with limited resources. Third, ascertaining which state possessed the greatest interest would require litigation on that issue in every case. Because the issue would be one of federal law, a final resolution by the Supreme Court would be necessary in many disputed cases. Of course, even under established principles, full faith and credit questions are ultimately federal questions. Nevertheless, the only federal question that currently arises in most full faith and credit cases—whether the first forum's courts had jurisdiction<sup>113</sup>—does not approach the complexity of deciding in each case

111. *Riley v. New York Trust Co.*, 315 U.S. 343, 348-49 (1942).

112. Because the bases for jurisdiction are broader now than they have been in the past, this possibility is less likely than it once was. The recent case of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), however, illustrates that the situation can arise. *See id.* at 299 (because defendant lacked adequate contacts with state in which accident occurred, that state lacked jurisdiction over products liability action).

113. A second forum is free to re-examine the jurisdictional basis of a sister state's judgment. The finality of sister state's judgments "does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given, to pronounce it; or the right of the State itself to exercise authority over the person or the subject-matter." *Thompson v. Whitman*, 85 U.S. (18 Wall.) 457, 462 (1874) (quoting J. STORY, COMMENTARIES ON THE CONSTITUTION (3d ed. Boston 1858)).

which state has the greatest interest in a particular controversy. Finally, in light of the Supreme Court's position that even questions of full faith and credit to statutes do not require a balancing of state interests,<sup>114</sup> it would be inconsistent to establish an inflexible "state of greatest interest" test for questions of full faith and credit to judgments. The affront to a state's sovereignty is likely to be at least as great if the state's judgments, rendered after due deliberation by competent courts, are ignored because another state has a greater interest.

Some of these problems would be alleviated if the Court were to require full faith and credit only for judgments of states with any interest, not necessarily the greatest interest. This solution would eliminate the inconsistency with the established law that governs the applicability of full faith and credit to statutes. Under this approach, the problems of judicial jurisdiction and inconvenience to parties might be of lesser dimension, but they still would exist. Most importantly, under this theory a federal question other than the jurisdictional one would remain, thus requiring a decision as to whether the first forum had any interest, rather than the greatest interest, in the dispute.

An additional problem is inherent in any attempt to grant full faith and credit only to judgments of states with an interest or the greatest interest in a dispute: the need to reduce each case into its component issues. Choice-of-law theory recognizes that different states may have greater interests in the different issues that arise in a particular controversy.<sup>115</sup> Few systems could be more unwieldy than one that would permit different states to reach final resolutions of different issues within a particular case. The burden and inconvenience both to the parties and to the judicial system would be great, and the confusion intolerable. On the other hand, without a segregation of the various issues in dispute, an interest analysis would be of dubious utility.

In addition to these practical problems, an interest analysis would present serious jurisprudential obstacles. Such an approach ignores the sovereign interests of the several states in adjudicating disputes between parties over which they have jurisdiction.<sup>116</sup> Surely the Court would commit a serious affront to the sovereignty of a state by requiring it to abstain from adjudicating the rights of two parties seeking redress in its courts on the ground that another state has a greater interest. The authority to resolve disputes between parties over whom the sovereign has power is one of the basic attributes of sovereignty itself.<sup>117</sup> In a federal system, it is one thing to

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114. See notes 99-100 *supra* and accompanying text (explaining Court's refusal to require one state to defer to the conflicting laws of another state).

115. The *Restatement (Second) of Conflict of Laws* explains: "The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties." *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 145 (1971) (emphasis added).

116. When a sister state's statutes alone are involved, it is unnecessary to evaluate a sovereign's executive or judicial interests: the forum state merely exercises its judicial power in deciding which statutes ought to be applied. To suggest that a sister state's interest should prevent the forum state from even hearing the case, however, requires a substantial leap.

117. See generally J. LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT*, Chapter IX, of the Ends of Political Society and Government, § 127. Similarly, in *Pennoyer v. Neff* the Supreme Court stated:

[E]very State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the



require that one sovereign state honor adjudications made by another coordinate state; it is quite another to require that a sovereign state with power over the parties abstain from dispute resolution entirely, or at best limit itself to adjudication subject to veto by the courts of a co-equal state. In short, an interest analysis of full faith and credit for judgments is inconsistent with our notion of personal jurisdiction and the concept of sovereignty that underlies it.<sup>118</sup>

The principal alternative to an interest analysis is a system based, as ours has been, on uniform adherence to the first judgment rendered by a court with jurisdiction. This practice satisfies the major requirement of a federal system by providing a unifying principle that avoids the confusion of conflicting or contradictory judgments in various states of the union. Moreover, it furthers other federal policies as well. It keeps duplicative litigation to a minimum by permitting the first court that may properly exercise jurisdiction to resolve a dispute finally, instead of deferring to a court in a state possessing a greater interest in the dispute, or rendering a judgment that will be, in effect, subject to the review of a sister state's court. In addition, a jurisdiction-based rule limits significantly the scope of litigation, in both the initial court that renders judgment as well as courts that entertain challenges to that judgment. No federal question arises regarding the sufficiency of a state's interest to resolve a dispute. Thus, a jurisdiction-based rule assures smooth functioning of the federal system by reducing both the number and the complexity of matters litigated in multiple cases.

These advantages, of course, exact a price. In some cases, a state with an interest in a particular dispute will be foreclosed from considering a dispute by an earlier adjudication in a state having an interest of equal, or possibly lesser, significance. It is this price that a plurality of the Supreme Court was unwilling to pay in *Thomas v. Washington Gas Light Co.* In an opinion which, narrowly construed, applies only to workmen's compensation awards, Justice Stevens indicated that an interested state need not be bound by all determinations made in a sister-state proceeding, but only by determinations of fact.<sup>119</sup> Thus, the opinion attempted to reconcile the interests of individual states. If, as appears likely, the Court intended this reconciliation to apply only to

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civil status and capacities of its inhabitants. . . . [T]o enforce an extra-territorial jurisdiction by a [sister state's] tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation.

95 U.S. 714, 722-23 (1878).

118. In the context of personal jurisdiction, the Supreme Court recently explained:

[T]he Framers . . . intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its Sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). See also *Hanson v. Denckla*, 357 U.S. 235, 251 (1958) (restrictions on personal jurisdiction consequence of territorial limitations on power of states).

119. See 448 U.S. at 281 ("unexceptionable" full faith and credit principle that resolutions of factual matters underlying judgment must be given same *res judicata* effect in forum as they have in rendering state).

workmen's compensation awards or even to all administrative determinations,<sup>120</sup> the distinction between those and other judgments rests on shaky foundations.<sup>121</sup> If, on the other hand, the opinion's reach is broader, extending to all judgments, *Thomas* fails to consider how so limiting the scope of full faith and credit will frustrate federal interests.

Justice Stevens began his "fresh examination of the full faith and credit issue"<sup>122</sup> in *Thomas* by noting that "[t]hree different state interests are affected by the potential conflict between Virginia and the District of Columbia."<sup>123</sup> Although he ultimately concluded that permitting the District of Columbia to make a supplementary award of workmen's compensation benefits would frustrate no state interest of Virginia,<sup>124</sup> Justice Stevens never addressed the federal interests that were frustrated by upholding the second award. This is particularly surprising because in the same opinion, Justice Stevens rejected the rationale of *McCartin* as an "unwarranted delegation to the States of this Court's responsibility for the final arbitration of full faith and credit questions."<sup>125</sup> Stripped to its essentials, however, *McCartin* stood only for the proposition that if a state expressly disavows an interest in precluding subsequent supplementary workmen's compensation awards, sister states, out of respect for the disavowed interest, need not refrain from making such awards.<sup>126</sup> If the Supreme Court's role in full faith and credit cases is limited to evaluating the interests of the several states, the *McCartin* rule is an eminently sensible one. There can be no reason for the Supreme Court to conclude that a particular state has an interest in precluding supplementary awards if that state itself has expressly disclaimed such an interest.<sup>127</sup>

The foregoing discussion does not suggest that the *McCartin* rule is analytically defensible. The rule is indefensible not because states should be prevented from deciding conclusively that they have no interest in precluding further litigation, but because the interests of the rendering state are not the only interests that dictate against relitigating issues. Federal policies and interests are involved, and it is those policies and interests that are embodied in the full faith and credit clause. Even if a particular state were unconcerned with the effect of its judgments in sister states, the federal interest in assuring the smooth functioning of the federal system nationwide would require that judgments of that state be given effect elsewhere. As Reese and Johnson wrote more than thirty years ago, "[f]ull faith and credit is a national policy, not a state policy. Its purpose is not merely to demand respect from one state for

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120. The *Thomas* Court summarized its holding as follows: "The Full Faith and Credit Clause should not be construed to preclude successive workmen's compensation awards." *Id.* at 286. In his analysis, however, Justice Stevens discussed the limitations of administrative tribunals generally, thereby implying that *Thomas* applies equally to all administrative decisions. See *id.* at 281-82 (discussing differences between court judgments and administrative determinations).

121. See notes 164-80 *infra* and accompanying text (criticizing attempts to distinguish administrative from judicial proceedings in application of full faith and credit).

122. 448 U.S. at 277.

123. *Id.*; see note 78 and accompanying text (interests include placing limit on employer's liability, providing employee with adequate remedy, and upholding integrity of first state's decision).

124. *Id.* at 284.

125. *Id.* at 271.

126. See notes 50-56 *supra* and accompanying text (discussing *McCartin* holding).

127. See notes 102-10 *supra* and accompanying text (discussing analogous problem with full faith and credit to statutes).

another, but rather to give us the benefits of a unified nation by altering the status of otherwise independent, sovereign states"<sup>128</sup>

In light of the federal policies that Justice Stevens ignored, the position he took in *Thomas* loses much of its appeal. Conflicting judgments, regardless of whether they arise from the application of differing rules of law or different findings of fact, equally undermine the policy of national unification. The resulting disorder in the federal system is no greater in one case than in the other. Litigation in one state would not finally determine the rights of the parties as long as the same set of facts might give rise to different legal consequences in the courts of another state. In most circumstances, there would be no means of choosing between the judgments of the two states unless the Supreme Court could conclude as a matter of federal law that the judgments of one state would frustrate sovereign interests of the other, but not the reverse.

As long as the full faith and credit clause is viewed as an instrument for implementing the federal policy of national unification, determining the extent of state interests remains an issue of diminished importance. A reading of the Supreme Court precedents until *Thomas* leads to the conclusion not only that state interests are less significant than federal policies but that they might be irrelevant entirely.<sup>129</sup> Only competing federal policies, therefore, would justify failing to give effect to a sister state's judgment. One need not go that far, however, to conclude that Justice Stevens' analysis in *Thomas*, if intended to apply beyond workmen's compensation awards, misses almost entirely the point of the full faith and credit clause.

Moreover, as long as the Supreme Court continues to view full faith and credit to public acts as a relatively insignificant restriction on the constitutional power of the forum state to apply its own law,<sup>130</sup> requiring the enforcement of sister-state judgments will cause little additional frustration of sovereign interests. The Court's unwillingness to federalize choice-of-law questions through the full faith and credit clause indicates a lack of federal concern with frustration of state interests caused by the application of the law of a state having less interest than a sister state. If the needs of the federal

128. Reese & Johnson, *supra* note 61, at 161-62, quoted in *Thomas v. Washington Gas Light Co.*, 448 U.S. at 271 n.15.

129. See, e.g., *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943) (no considerations of local policy sufficient to impair force that full faith and credit clause gives to judgments); *Yarborough v. Yarborough*, 290 U.S. 202, 212 (1933) (alimony decree binding under full faith and credit clause despite second state's interest in providing increased award to its resident); *Fauntleroy v. Lum*, 210 U.S. 230, 236-37 (1908) (judgment on gambling debt binding under full faith and credit clause despite illegality of contract in second state). In *Williams v. North Carolina* the Supreme Court explained the applicability of the full faith and credit clause to divorce decrees in these terms:

It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. For it is pointed out that under such a rule one state's policy of strict control over the institution of marriage could be thwarted by the decree of a more lax state. But such an objection goes to the application of the full faith and credit clause to many situations. It is an objective in varying degrees of intensity to the enforcement of a judgment of a sister state based on a cause of action which could not be enforced in the state of the forum. . . . Such is part of the price of our federal system.

317 U.S. 287, 302 (1942).

130. See note 97 *supra* and accompanying text (full faith and credit does not require one state to substitute another state's laws for its own).



system do not prevent a forum state from so frustrating a sister state's greater interest there is also no federal reason to prevent frustration of sister-state interests by enforcing everywhere the forum judgment that is based on forum law.<sup>131</sup>

Requiring enforcement of sister state judgments, whatever law the sister state may have applied, generally does not create significant unfairness for parties or potential parties to litigation, a concern of comparable significance. The party who brings the original action normally has some choice of forum, at least when more than one state has a significant interest in the outcome of the litigation. Although the constitutional power of the state to apply its own law to a particular dispute does not necessarily imply judicial jurisdiction in that state,<sup>132</sup> in most cases a state with a significant interest in applying its own law is likely to possess jurisdiction as well.<sup>133</sup> If a plaintiff has sufficient faith in the judicial process of a particular state to submit his claim to litigation there, he ought not later be able to complain of the resolution of that dispute. This is particularly true when the plaintiff could have brought his action in another state.

The same argument, of course, does not apply to a defendant in the first litigation, except perhaps if jurisdiction in that action depended upon his express consent. Whatever the effect accorded to sister-state judgments, as long as states are free in most instances to apply their own laws, defendants must submit to an adjudication based on the law of the plaintiff's chosen forum. Even if a sister state were not obliged to enforce such a judgement, the defendant would still be subject to the original forum's enforcement mechanisms. If the forum state has applied its law to an unwilling defendant in this manner, requiring sister states to enforce the first forum's judgment will represent a minimal incremental imposition.

The preceding discussion does not suggest that parties will never suffer prejudice as a result of the enforcement of sister-state judgments. It suggests only that in light of other impositions already condoned in our federal system, the prejudice some parties would endure as a result of such a rule would not be unreasonable. In addition, full faith and credit to public acts, and perhaps due process,<sup>134</sup> protect both the parties and interested states from at least the

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131. The Court's choice-of-law decisions place few limits on the ability of the forum state to apply its own law to a case in its courts. See note 95 *supra* and accompanying text (discussing Court's deference to state's choice of law). The Court, therefore, is willing to frustrate sovereign interests of sister states even in disputes that have relatively little connection with the forum. Permitting the sister state to ignore the forum judgment would significantly alleviate that frustration, but the cost to the federal system in permitting such a course would be quite high.

132. See note 112 *supra* and accompanying text (discussing possibility that state possessing greatest interest may lack jurisdiction over dispute).

133. This generally will be true except in instances where the primary basis for a state's application of its own law is the plaintiff's domicile, an insufficient basis for judicial jurisdiction. See *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (court may obtain jurisdiction over defendant only if he has minimum contacts with forum state). See also Martin, *Personal Jurisdiction and Choice of Law*, 78 MICH. L. REV. 872, 879 (1980) (suggesting minimum contacts test for legislative jurisdiction).

134. The majority and concurring opinions in *Allstate Ins. Co. v. Hague* discuss the interplay between the two clauses in the choice-of-law area. See 449 U.S. 302, 320 (1981) (full faith and credit and due process clauses satisfied when application of law neither arbitrary nor unfair); *id.* at 323-26 (Stevens, J., concurring) (full faith and credit protects federal interest in national unity; due process ensures fairness to litigants). See also Kirgis, *supra* note 100, at 96, 110 (full faith and credit prevents excessive provincialism;

grossest forms of parochialism on the part of sister states. These considerations together indicate that from the standpoint of the parties, enforcement of sister-state judgments, whatever the law applied, is not inherently unfair.

### C. SUMMARY

The role of state interests in full faith and credit cases should, and until the *Thomas* case unquestionably did, depend on whether the issue involved full faith and credit to public acts or full faith and credit to judicial proceedings. In the context of full faith and credit to public acts, an analysis of state interests is necessary to determine the obligations of sister states. The same is not true, however, with respect to full faith and credit to judicial proceedings. Evaluating the interests of individual states in determining whether sister-state judgments must be enforced is not only unnecessary, but also inconsistent with the basic needs of the federal system. The long accepted, if sometimes qualified, rule is that a judgment rendered by a court with judicial jurisdiction must be enforced in every sister state, whatever the interests of the sister state. Implicit in that rule is the recognition that full faith and credit is a federal policy designed to ensure national unification, and a policy to which competing state policies or interests must be subordinated. No superior alternative to the established rule has emerged that would not involve the subordination of federal full faith and credit policies.

### III. FULL FAITH AND CREDIT TO ADMINISTRATIVE PROCEEDINGS

An alternative explanation for the plurality's conclusion in *Thomas* is Justice Stevens' apparent rejection of the *Magnolia* premise<sup>135</sup> that administrative adjudications are entitled to the same *res judicata* effect as court judgments.<sup>136</sup> In *Magnolia*, even the Louisiana Court of Appeals, despite its denial of full faith and credit to the Texas workmen's compensation award, recognized that the award stood on the same footing as a court judgment.<sup>137</sup> Although the United States Supreme Court reversed, the Court reaffirmed that principle.<sup>138</sup>

In *Thomas*, however, Justice Stevens wrote that "the critical differences between a court of general jurisdiction and an administrative agency with limited statutory authority forecloses [sic] the conclusion that constitutional rules applicable to court judgments are necessarily applicable to workmen's

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due process prevents unfairness and arrogation of power); Martin, *Constitutional Limitations*, *supra* note 100, at 192 (full faith and credit regulates relations among states; due process regulates relations between state and individual); Reese, *Legislative Jurisdiction*, 78 COLUM. L. REV. 1587, 1590 (1987) (full faith and credit operates affirmatively to compel states to entertain certain suits or apply certain laws; due process operates negatively to forbid application of law without reasonable basis).

135. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 443 (1943).

136. See 448 U.S. at 281 (*Magnolia's* reliance on precedent as requiring that workmen's compensation awards stand on same footing as court judgments unwarranted).

137. *Hunt v. Magnolia Petroleum Co.*, 10 So. 2d 109, 112-13 (La. Ct. App. 1942), *rev'd*, 320 U.S. 430 (1943).

138. See 320 U.S. at 443 (regardless of whether accident board proceeding a "judicial proceeding" or "record," Texas award entitled to full faith and credit in Louisiana).



compensation awards."<sup>139</sup> This statement warrants further analysis in light of existing case law and the policies behind full faith and credit.

A. THE CASE LAW: *SCHENDEL*, *MAGNOLIA* AND *McCARTIN*

*Chicago, Rock Island & Pacific Railway v. Schendel*,<sup>140</sup> decided in 1926, provided precedent for the Court's statement in *Magnolia* that workmen's compensation awards are entitled to the same full faith and credit as court judgments.<sup>141</sup> The plurality in *Thomas*, however, read *Schendel* narrowly, as holding only that factual findings of state administrative tribunals are entitled to the same res judicata effect as findings by a court.<sup>142</sup>

In *Schendel* a railroad's negligence caused the death of one employee, Hope, and the injury of another, Elder.<sup>143</sup> For each employee, the railroad instituted an administrative proceeding under the Iowa workmen's compensation statute.<sup>144</sup> Both Hope's widow and Elder responded by asserting that the state law did not apply because the company and its employees were engaged in interstate commerce at the time of the accident.<sup>145</sup> They brought actions in Minnesota, seeking recovery under the Federal Employers' Liability Act (FELA),<sup>146</sup> which requires as a jurisdictional predicate a finding that employer and employee were engaged in interstate commerce.<sup>147</sup>

Before completion of the trial on the FELA claim in Minnesota, the Iowa administrative tribunal found that Hope had been engaged only in intrastate commerce, and awarded compensation to his widow.<sup>148</sup> After administrative and judicial review, judgment was entered affirming the compensation award.<sup>149</sup> Months later, the FELA action resulted in a judgment for the employee.<sup>150</sup> The Minnesota Supreme Court affirmed, thereby rejecting the railroad's contention that under the full faith and credit clause the Minnesota courts were not permitted to relitigate the jurisdictional issue that already had been resolved in the Iowa compensation proceeding.<sup>151</sup> The other Iowa administrative proceeding, involving the employee Elder had not yet reached its conclusion when the Minnesota court rendered a judgment in Elder's favor on his FELA claim.<sup>152</sup> The Minnesota Supreme Court again affirmed.<sup>153</sup>

139. 448 U.S. at 281.

140. 270 U.S. 611 (1926).

141. See *id.* at 617 (state determination of applicability of state workmen's compensation law barred subsequent action under federal law in another state).

142. See 448 U.S. at 281 (*Schendel* involved "unexceptionable" full faith and credit principle that resolutions of factual matters underlying judgment must be given same res judicata effect they would have in rendering state).

143. 270 U.S. at 612.

144. *Id.* at 614, 622-23.

145. *Id.* at 614, 623. Although coverage under the Iowa workmen's compensation law is elective, both Elder and Hope had chosen to be covered. *Id.* at 613.

146. Pub. L. No. 60-101, 71 Stat. 65 (1908) (current version at 45 U.S.C. § 51 (1976)).

147. *Id.*

148. 270 U.S. at 613.

149. *Id.* at 614-15.

150. *Id.* at 615.

151. *Id.* Significantly, even the Minnesota Supreme Court, which had permitted relitigation of the jurisdictional issue, had not differentiated between judicial and workmen's compensation proceedings. See generally *id.* at 615.

152. 163 Minn. 457, 458, 204 N.W. 557, 558 (1925), *aff'd*, 270 U.S. 611, 623 (1926).

153. *Id.*, 204 N.W. at 558.

The United States Supreme Court affirmed *Elder* and reversed, on full faith and credit grounds, the *Hope* decision.<sup>154</sup> The Court concluded that in *Elder* there was not yet an administrative award enforceable in the Iowa courts at the time of the Minnesota FELA judgment and therefore the Minnesota courts were entitled to reach an independent determination.<sup>155</sup> Res judicata principles and, derivatively, full faith and credit principles did not bar Elder's claim because of the absence of a final judgment.<sup>156</sup> In the *Hope* case, however, where there was an enforceable award and even a court judgment affirming the award, the Court concluded that "[t]he Iowa court . . . having adjudicated the character of the commerce in which the deceased was engaged, that matter, whether rightly decided or not, must be taken as conclusively established, so long as the judgment remains unmodified."<sup>157</sup>

According to the *Thomas* plurality, *Schendel* articulated no more than the "unexceptionable full faith and credit principle" that determinations of fact made in one state's proceeding are entitled to the same res judicata effect in sister states as in the rendering state.<sup>158</sup> The *Thomas* plurality characterized the Iowa determination that Hope had been engaged in intrastate commerce as a factual finding.<sup>159</sup>

The conclusion that Hope was engaged in intrastate commerce, however, is not merely a finding of fact. It is at least a mixed conclusion of law and fact that embraced both the factual determination that Hope performed certain activities within Iowa and the legal conclusion that certain legal consequences attached to these activities.<sup>160</sup> It is the legal aspect of this mixed conclusion that prevented the Minnesota courts from relitigating the issue.

An illustration may provide clarification. Suppose in the Iowa proceeding the tribunal had found only that for five days before his accident, Hope had been working exclusively in Iowa on a project within Iowa. Suppose this finding were necessary to support a particular remedy within Iowa, but the magic words "intrastate commerce" were never attached to the finding. The Iowa finding would not bar a Minnesota court faced with an action brought under FELA from concluding that the employee was nevertheless injured in the course of interstate commerce. First, the Minnesota court could find that other facts, neither litigated in nor relevant to the Iowa proceeding placed the

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154. 270 U.S. at 615.

155. *Id.* at 622-23.

156. *Id.* at 623.

157. *Id.* at 617.

158. 448 U.S. at 281.

159. *Id.*

160. The demarcation between issues of fact and issues of law is not clear. See RESTATEMENT (SECOND) OF JUDGMENTS § 68, Comment j (Tent. Draft No. 4, 1977) (often impossible to draw line between "ultimate facts," or issues of law, and evidentiary facts); cf. *Thomas v. Washington Gas Light Co.*, 448 U.S. at 288 (White, J., with Burger, C.J. & Powell, J., concurring in judgment) (dispositive issues in tort actions frequently mixed questions of law and fact; actions satisfying one state's standard of care might be negligent in another state). Issues sometimes characterized as issues of "ultimate fact" actually involve the application of law to fact. If, however, a particular tribunal's determination rests on its application of law to fact, and therefore on its interpretation of the law it applies, a requirement that the tribunal's determination be given effect in subsequent proceedings carries with it the power of the initial tribunal to bind subsequent courts on issues of law. If this is true, there is little reason to prevent the tribunal from binding subsequent courts on other issues of law, even when they are divorced from issues of fact.

employment within the scope of "interstate commerce."<sup>161</sup> Alternatively, the court could conclude that even on the same facts, the employment was within the scope of interstate commerce, and therefore created obligations under FELA. Such a conclusion might constitute reversible error as an incorrect interpretation of FELA, but not as a denial of full faith and credit to the Iowa determination.<sup>162</sup>

The *Schendel* case differs from the illustration because of the legal conclusion in the Iowa proceeding that only intrastate commerce was involved, and therefore that FELA did not preempt state law on the subject. It is only that legal conclusion that prevented relitigation of the issue in Minnesota. The Supreme Court's holding in *Schendel* that the full faith and credit clause prohibited relitigation implies, therefore, that conclusions of law, not just findings of fact, rendered in administrative proceedings are entitled to full faith and credit. The plurality's analysis in *Thomas* missed this point.

Moreover, the *Schendel* opinion suggested no distinction between judicial and administrative proceedings. Nothing in Justice Sutherland's opinion implies that any less faith and credit is due administrative determinations than judicial ones. Throughout the opinion, he made references to the "Iowa court,"<sup>163</sup> the "Iowa judgment,"<sup>164</sup> and the "judicial power"<sup>165</sup> exercised under the Iowa workmen's compensation statute. One might infer that the Court accorded full faith and credit only to the Iowa court judgment that affirmed the workmen's compensation award, and not the award itself, but the Court dispelled that inference in its discussion of the *Elder* case. Had it wished to distinguish administrative from judicial proceedings, the Court could have rested its decision on that ground because no court had rendered judgment in *Elder*'s workmen's compensation proceeding. Instead, the Court emphasized that because of the pendency of administrative review, *Elder* had received no enforceable administrative award.<sup>166</sup> Any distinction between final administrative awards and judgments enforcing those awards is senseless, as Justice White pointed out in his *Thomas* concurrence,<sup>167</sup> if its only effect is to force cautious litigants concerned about the full faith and credit

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161. Suppose, for instance, that Hope had worked outside Iowa for twenty of the twenty-five days preceding his accident, and that his job entailed moving constantly from project to project to assist in particular aspects of his employer's business. No *res judicata* or collateral estoppel doctrine would prevent the Minnesota courts from considering these facts and concluding that Hope was engaged in interstate commerce. See generally RESTATEMENT (SECOND) OF JUDGMENTS § 68 (Tent. Draft No. 4, 1977).

162. The facts found in the hypothetical Iowa proceeding possess no intrinsic significance. They are significant in the subsequent Minnesota proceeding only to the extent that FELA makes them significant. The Iowa proceeding, however, never determined the significance of the facts found for FELA purposes. The Minnesota court is, therefore, free to make that determination for itself. If it errs by attaching too little significance to the facts found in Iowa, while conceding that those facts have been established, its error is merely one of interpreting FELA. It is FELA, not the Iowa proceeding, that determines the significance of the Iowa facts for FELA purposes.

163. 270 U.S. at 617.

164. *Id.* at 616, 618.

165. *Id.* at 616.

166. *Id.* at 623.

167. See 448 U.S. at 286 (White, J., with Burger, C.J. & Powell, J., concurring in judgment) (plurality's rule must allow subsequent recovery even if award upheld by court; otherwise employers would simply seek judicial review in first forum).

effect of administrative awards to seek judicial confirmation of administrative action.

In sum, there is little support in *Schendel* itself for the *Thomas* plurality's interpretation of that case. Moreover, in *Magnolia* the Supreme Court treated *Schendel* as if it had placed administrative determinations on the same footing as court judgments for full faith and credit purposes.<sup>168</sup> It is significant that even in *McCartin*, despite the Court's evident desire to abandon *Magnolia*, and despite its perversion of full faith and credit principles to distinguish the case, the Court did not retreat from the position that final administrative adjudications are entitled to the same full faith and credit as court judgments.<sup>169</sup>

### B. THE POLICY BASES

The *Thomas* plurality concluded that "the critical differences" between courts of general jurisdiction and administrative agencies justified different treatment for full faith and credit purposes.<sup>170</sup> In order to be "critical," however, any differences must implicate the basic policy behind the full faith and credit clause—the need for national unification within the context of a federal system.

If national unification is at the heart of the full faith and credit clause, whether a determination issues from an administrative body is of no importance. As long as a state employs a method of resolving disputes that is constitutionally adequate, the state's resolutions should be no less binding

168. See *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 446 (1943) (citing *Schendel* for proposition that workmen's compensation award stands on same footing as judgment).

169. Cf. *Industrial Comm'n v. McCartin*, 330 U.S. at 630 (employee's reservation of rights in second state distinguished award from "ordinary judgment or decree") (emphasis added). Also relevant to the issue of full faith and credit to administrative determinations is *Broderick v. Rosner*, 294 U.S. 629 (1935). In the *Broderick* case, New York's Superintendent of Banks brought an action in the New Jersey courts to recover assessments he had levied, pursuant to New York law, against stockholders of the Bank of the United States who resided in New Jersey. *Id.* at 638. The New Jersey courts, citing a New Jersey statute, refused to entertain the action, and the plaintiff-Superintendent appealed to the Supreme Court. *Id.* at 639.

In an opinion by Justice Brandeis, the Supreme Court reversed and held that the full faith and credit clause required New Jersey to entertain the action. *Id.* at 643. It did not decide what effect the Superintendent's assessments need be given in the New Jersey proceedings. *Id.* at 646. The Court did, however, make several assertions that bear on the problem. Justice Brandeis wrote:

The fact that the assessment here in question was made under statutory direction by an administrative officer does not preclude the application of the full faith and credit clause. If the assessment had been made in a liquidation proceeding conducted by a court, New Jersey would have been obliged to enforce it, although the stockholders sued had not been made parties to the proceedings, and, being nonresidents, could not have been personally served with process.

*Id.* at 644. Justice Brandeis based these conclusions on the requirement that sister states give full credit to "public acts," not to judgments. *Id.* If that conclusion is sound, the *Broderick* discussion serves only to limit state choice-of-law decisions. Only the state of incorporation may impose liabilities on stockholders of domestic corporations, and if Justice Brandeis' analysis of the *Broderick* problem is correct, that liability must be enforced in all states. If full faith and credit to public acts does not extend so far, however, perhaps Justice Brandeis' conclusions can be supported under the principles of full faith and credit to judgments. The court did not reach these questions.

170. 448 U.S. at 281.



because the rendering tribunal is not a traditional court. It is the determination, not the determiner, that requires full faith and credit.

There are, of course, differences between courts established as a part of the judicial branch of government and administrative agencies operating within the executive branch. Perhaps if the full faith and credit clause were intended to foster respect for sister-state judgments, rather than to further national unification, there might be reason to accord greater respect to a judicial determination than to a less formal administrative decision. Even the *Thomas* plurality, however, was unwilling to adopt that basis for full faith and credit.<sup>171</sup> Whatever differences there may be between state courts and state administrative tribunals, those differences do not appear to possess any federal constitutional significance. State governments are free to distribute the judicial business of the state among the various branches of state government as they see fit without restriction by the federal Constitution. If an individual state chooses to vest some or most of what has been traditionally judicial power in administrative agencies, that choice ought not to carry federal constitutional implications. Separation of powers in state government, in contrast to the federal government, is not a matter of federal constitutional law.<sup>172</sup> A state's choice to vest decisionmaking power in a body not called a court should not render that body's determinations less entitled to enforcement in sister states.

Administrative bodies issue a wide variety of determinations that are not at all like court judgments. Not all of these determinations, many of them legislative in nature, others made *ex parte*, can or should be enforceable in sister states. Traditional full faith and credit principles, however, should suffice to prevent enforcement of administrative determinations when enforcement would be unfair or unconstitutional.<sup>173</sup> Unless the administrative

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171. See *id.* at 284-85 (compensation proceedings should be informal to accommodate state interest in providing efficient recovery).

172. Aside from the guarantee clause, which requires the United States to guarantee every state a republican form of government, U.S. CONST. art. IV, § 4, the United States Constitution does not prescribe any particular form of government for its constituent states. Of course, individual state constitutions may require the same separation of powers embodied in the United States Constitution for the federal government. The scope of the separation of powers doctrine in any individual state, however, is a matter of state law.

173. Perhaps the foremost protection is the general full faith and credit principle that a determination is conclusive in a sister state only to the extent that it is conclusive in the state of its rendition. See 28 U.S.C. § 1738 (1976) (acts, records and judicial proceedings entitled to same full faith and credit as in state of rendition). The *res judicata* principles of the individual states provide a safeguard against unwarranted enforcement of administrative determinations in sister states. See RESTATEMENT (SECOND) OF JUDGMENTS § 131 (Tent. Draft No. 7, 1980), which provides, in part:

A determination by an administrative tribunal is conclusive under the rules of *res judicata* only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including: (a) Adequate notice to persons who are to be bound by the adjudication . . . ; (b) The right . . . to present evidence and legal argument . . . and fair opportunity to rebut evidence and argument . . . ; (c) A formulation of issues and law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof; (d) A rule of finality . . . ; and (e) Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question . . . .

body has a basis for personal jurisdiction over the parties and complies with constitutional notice requirements, for example, its determination need not, and indeed may not, be accorded full faith and credit.<sup>174</sup> Similarly, if the administrative determination is not final, but remains subject to review or to modification by the agency, traditional full faith and credit principles would not require sister-state enforcement.<sup>175</sup> The principle remains simple: a state's choice to delegate decisionmaking authority to one body rather than another should be of no importance for full faith and credit purposes; what is significant is the nature of the decision itself.

### C. THE LIMITED JURISDICTION OF ADMINISTRATIVE BODIES

The *Thomas* opinion emphasized one characteristic of the Industrial Commission of Virginia that does distinguish it from courts of general jurisdiction: the commission's jurisdiction "is limited to questions arising under the Virginia Workmen's Compensation Act."<sup>176</sup> The commission, therefore, lacked the power to evaluate the claim that Thomas was entitled to compensation under the law of the District of Columbia. Justice Stevens concluded that "[s]ince [the commission] was not requested, and had no authority, to pass on petitioner's rights under District of Columbia law, there can be no constitutional objection to a fresh adjudication of those rights."<sup>177</sup>

Justice Stevens' conclusion, despite its great superficial appeal, proves too much. First, limited jurisdiction is not a quality peculiar to administrative bodies. Numerous state courts, such as small claims courts or probate courts, are limited in jurisdiction either by amount in controversy or by subject matter. Judgments of these courts are no less entitled to full faith and credit because of their limited jurisdiction. The plurality's rationale in *Thomas* would require that these judgments, too, be treated differently from judgments of courts of general jurisdiction.

Moreover, describing the Virginia commission as having limited jurisdiction is somewhat misleading. Generally, a court of limited jurisdiction is deprived of judicial power that instead is allocated to some other court or courts within the state. If such a court of limited jurisdiction is not authorized to deal with a particular matter or if the court's determinations are subject to de novo review by another body within the state, full faith and credit would not require a sister state to accord any more effect to the determinations than it would receive in the rendering state. Because the determination of the court of limited jurisdiction might not exhaust the judicial process available within the state of rendition, the full faith and credit clause, with its purpose of fostering national unification, also would not prevent relitigation in other states.

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174. See *Hanson v. Denckla*, 357 U.S. 235, 255 (1958) (Delaware court entitled to refuse full faith and credit to Florida judgment because Florida without jurisdiction over indispensable party to original action).

175. See *Sistare v. Sistare*, 218 U.S. 1, 26 (1910) (absolute judgment for alimony not subject to modification in rendering state entitled to full faith and credit. See also *RESTATEMENT (SECOND) OF JUDGMENTS* § 131(2), Comment e (Tent. Draft No. 7, 1980) (requirement of finality applies to determinations of administrative agency; to determine finality, reference must be made to procedures of agency).

176. 448 U.S. at 282.

177. *Id.* at 283.

The Virginia Commission, however, does not have limited jurisdiction in this sense. No other court or agency in Virginia has power to provide any remedy in a case within the scope of the Workmen's Compensation Act. The Virginia legislature has granted to the commission the exclusive power to deal with workmen's compensation cases.<sup>178</sup> Whatever remedy is available in Virginia is available through the commission.

In furtherance of the goal of national unity, other states should honor the Virginia Commission's disposition of any dispute. This conclusion is subject to criticism because it deprives a litigant in *Thomas*' position of the right to litigate any choice-of-law questions and any issues of substantive law of states other than Virginia. This deprivation, however, is not due to the limited jurisdiction of the administrative body. Virginia could have accomplished the same result by providing, either legislatively or judicially, a choice-of-law rule requiring the application of Virginia law in all workmen's compensation claims that stem from an injury in Virginia. Such a choice-of-law rule would, whatever its wisdom, be entirely constitutional.<sup>179</sup> A judgment of a Virginia court of general jurisdiction rendered according to the terms of such a rule effectively would foreclose the right of an injured workman to litigate any issues, choice-of-law or substantive, that the workman would like to raise in any other state.

Because constitutional limitations on choice-of-law remain relatively insignificant, any state that chooses to be provincial in its choice-of-law doctrine can, through the full faith and credit clause, impose its provinciality on other states and on any litigants who proceed to judgment within the state. There appears, therefore, to be little additional unfairness in precluding further litigation after an initial determination by an administrative agency that lacks the power to make choice-of-law decisions. Any possible unfairness results from the wide latitude that the Constitution permits the states in making choice-of-law decisions, not from the limited jurisdiction of administrative agencies.<sup>180</sup>

178. See VA. CODE § 65; 1-92 (1980) (all questions arising under act determined by commission).

179. See *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 500-501 (1939) (state where injury occurred may apply own compensation law rather than that where state employer and employee resided and contracted).

180. As additional support for its proposition that a litigant before an administrative body lacking power to make choice-of-law determinations should be able to relitigate those issues, the *Thomas* plurality cited a tentative draft of the *Second Restatement of Judgments*. 448 U.S. at 283 n.29. Section 61.2(c) of the *Restatement* sets forth an exception to the general rule that claims are extinguished in a judgment. Under the *Restatement* a claim is not extinguished when,

the plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdictions of the courts . . . and the plaintiff desires in the second action to rely on that theory or to seek that remedy . . . .

RESTATEMENT (SECOND) OF JUDGMENTS § 61.2(1)(c) (Tent. Draft No. 5, 1978).

The *Restatement* provision cited in *Thomas* in fact does not directly support the *Thomas* analysis: the provision concerns the res judicata effect of a judgment within a state, not the extraterritorial effect of a judgment mandated by the full faith and credit clause. The issues of the intrastate and extraterritorial effects of judgments are not only different, they are not even analogous. When a state divides jurisdiction among its courts in a fashion that prevents a litigant from raising all claims in one court, there is no implication that the state intends to force the litigant to choose from among his claims. Instead, the state

In sum, although the limited jurisdiction of administrative bodies provides a superficially attractive basis for permitting sister states to relitigate issues resolved in the original forum, the *Thomas* plurality's analysis of the issue does not withstand close scrutiny. Moreover, the *Thomas* opinion provides no alternative basis for distinguishing between court judgments and administrative determinations for full faith and credit purposes.

### CONCLUSION

*Thomas v. Washington Gas Light Co.* presented the Supreme Court with a difficult problem. An injured workman had sought and received compensation for his injury in a forum less generous to him than another available forum. The workman did this, in all probability, because he was poorly advised or not advised at all. The natural tendency of any court would be to avoid punishing the injured workman for mistakes resulting from his lack of legal sophistication. As Justice Rehnquist noted in dissent, had the employee been the victim of employer coercion in any way, the case would have been simple because the Virginia statute would have permitted a court to vacate the award.<sup>181</sup> Even in the absence of an employer's abuse of greater bargaining power, the employee's case is a sympathetic one.

The *Thomas* plurality pursued two paths in its attempt to permit plaintiff to secure additional relief. Unfortunately, the plurality failed to acknowledge that both paths led to dead ends. Instead, the Court raised a panoply of full faith and credit questions to which it has provided no satisfactory answers.

First, the plurality's attempt at balancing state interests was both unprecedented and unwarranted in the context of granting full faith and credit to

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has merely assigned some claims to one forum and others to a different forum, with the logical implication, recognized by the *Restatement*, that a judgment in the first forum should not extinguish claims that the state mandates must be heard in a different forum.

In stark contrast, the delegation to a workmen's compensation commission of the judicial power to adjudicate employees' claims is a decision by the state to foreclose plaintiff from seeking additional relief. It is not the limited jurisdiction of the court or administrative body that prevents plaintiff from seeking relief in the first action; it is the decision by the state not to authorize any judicial or administrative body, including a court of general jurisdiction, to provide relief other than the relief available in the first forum. The *Restatement* provision, then, is not relevant to the analysis offered in the *Thomas* opinion. The argument of the plurality is weakened further by reliance on section 131 of the *Second Restatement of Judgments*, which specifically deals with administrative adjudications. That provision does not include a provision parallel to section 61.2(1)(c), despite the greater likelihood that "limited jurisdiction" problems will arise in connection with administrative determinations. The only relevant exceptions included in section 131 are those stated in subsection (4):

- [A]dministrative determinations should not be given preclusive effect: if according preclusive effect to determination of the issue would be incompatible with a legislative policy that:
- (a) The determinations of the tribunal adjudicating the issue be specially expeditious; or
  - (b) The tribunal in which the issue subsequently arises be free to make an independent determination of the issue in question.

RESTATEMENT (SECOND) OF JUDGMENTS § 131(4) (Tent. Draft No. 7, 1980).

In *Thomas*, neither of these exceptions would avail the injured workmen because no legislative policy of Virginia would be incompatible with giving preclusive effect to the administrative determination. In fact, Virginia formulated its policy specifically to ensure that the administrative determination has preclusive effect. Again, however, because *Restatement* section 61.2(1)(c) deals not with full faith and credit problems, but only intrastate res judicata questions, the section is of limited utility in the *Thomas* context.

181. 448 U.S. at 294 (Rehnquist, J., with Marshall, J., dissenting).



judicial proceedings, as opposed to public acts. The Court's approach to enforcement of judgments is fraught with uncertainty, and is in direct conflict with the oft-stated purpose of the full faith and credit clause—the need for national unification within the federal system.

Second, the Court's attempt to distinguish between court judgments and administrative determinations finds no justification in the policies that underlie the full faith and credit clause. The mere fact that a determination is "administrative" rather than "judicial" should not have significance for full faith and credit purposes, especially when the distribution of state adjudicatory authority is a matter of state law that the Constitution leaves largely restricted.

Of course, five members of the Court explicitly rejected the *Thomas* plurality's analysis. These five justices disagreed only on the precedential effect to be accorded the *McCartin* case, which all the justices conceded rested on, at best, "questionable foundations."<sup>182</sup> Otherwise, the five justices would constitute a majority, in an appropriate case, for repudiating the doctrinal heresy expressed by Justice Stevens in the *Thomas* case, and more importantly, for eliminating the potential practical problems that flow from the *Thomas* plurality's evisceration of the full faith and credit clause.

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182. *Id.* at 289 (White, J., with Burger, C.J. & Powell, J. concurring in judgment).